IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7743 of 2003
with
Special Civil Application
Nos.7744, 7792 and 7800 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DESAI SAVAJIBHAI LALJIBHAI

Versus

STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 7743 of 2003
Mr.Hardik Raval, with MR PS PATEL for Petitioner No. 1
Mr.Dagli, Assistant GOVERNMENT PLEADER,
for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2,5
MR MAHESH B BARIYA for Respondent No. 3
DHARMENDRA S BHALKIA for Respondent No. 3
MR DM THAKKAR for Respondent No. 4

CORAM : MR.JUSTICE P.B.MAJMUDAR
Date of decision: 04/07/2003

ORAL JUDGEMENT

Rule. Respective Advocates waive service of rule on behalf of respective respondents.

With the consent of the parties, the matters are heard today finally.

By filing these petitions, the petitioners have challenged the order of the Taluka Development Officer, Idar, by which the petitioners are directed to deposit a stipulated amount as per the said order. The said order is in the form of notice, by which the petitioners are directed to deposit certain amount.

It is argued by Mr.Raval that the present petitioners have actually travelled and, therefore, there is no question of issuance of such notice and they are wrongly penalisd even though they are bona fide travellers and they have not misused the benefit of LTC in any manner.

In petitions filed under Article 226 of the Constitution of India, this Court cannot decide a disputed question of fact, whether the petitioners have actually travelled or not. It is open for the petitioners to approach the TDO again, by producing appropriate evidence to satisfy the TDO that they have actually travelled. Even otherwise, against the order of the TDO, the petitioners can also file an appeal before the DDO. Since this question cannot be adjudicated in a petition under Article 226 of the Constitution of India, these petitions cannot be entertained. However, the petitioners are directed to make representation before the TDO, by producing appropriate evidence whether, actually, the petitioners have travelled or not, and if any such evidence is produced before the TDO, Idar, the TDO can examine whether the petitioners have actually travelled or not. If any such representation is made, the Authority may decide the same as expeditiously as possible.

Even against the order of the TDO, there is a statutory remedy of appeal under the Act. Even otherwise, the petitioners can file a suit for declaration and injunction and this Court is not expected to decide whether the petitioners have actually travelled by taking benefits of LTC, as, this question will be a highly disputed question of fact.

In the above view of the matter, these petitions cannot be entertained on the aforesaid ground of availability of alternative remedy by way of appeal or by way of filing appropriate civil suit for the purpose, as, the petitioners can lead appropriate evidence before the

Civil Court and can prove the fact whether they have actually travelled or not.

It goes without saying that if the petitioners are able to prove before the appellate forum that actually they have travelled, then, naturally, there will not be any question of taking any penal action against them. However, it is made clear that this court has not expressed any opinion whether the petitioners have actually travelled or not, as, it is for the authority to decide the said question.

The petitions are accordingly rejected. Rule is discharged. No costs.

4th July, 2003 (P.B. Majmudar, J.)

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(apj)